

Application Serial No.: 09/926,636
Amendment dated January 23, 2004
Reply to Office Action dated October 23, 2003

REMARKS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 5-8, and 11 are presently active in this case, Claim 1 having been amended by way of the present Amendment.

The Applicant notes that the Office Action Summary indicates that "[t]he proposed drawing correction filed on 28 November 2001 is approved by the Examiner." The Office Action Summary further states that "[i]f approved, corrected drawings are required in reply to this Office action." However, the Applicant notes that no "proposed drawing correction" was filed on November 28, 2001. In fact, the application, which included formal drawings, was filed on November 28, 2001, and no proposed drawing corrections were ever filed in this case. Accordingly, the Applicant respectfully submits that corrected drawings need not be submitted at this time.

In the outstanding Official Action, Claims 1, 3, 5-8, 10, and 11 were rejected under 35 U.S.C. 103(a) as being unpatentable over JP 7-34486 in view of Stevens (U.S. Patent No. 5,481,441) and in view of Martin, Jr. (U.S. Patent No. 4,702,516). For the reasons discussed below, the Applicant respectfully requests the withdrawal of the obviousness rejection.

The Applicant submits that a *prima facie* case of obviousness cannot be established in the present case because (1) the references, either taken singularly or in combination, do not teach or suggest all of the claim limitations, and (2) there is no suggestion or motivation to combine the references. (See MPEP 2143.)

In consideration of the Examiner's advice that the "Applicant must claim structural

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details not suggested by the prior art that make it superior¹ to the construction disclosed by the prior art," Claim 1 has been amended to recite that the reinforcing beam member is located on the outer side of the cross beam member at least in a partly overlapped relation with the cross beam member, in order to ensure maximum visibility through the front and top windows for an operator in the cab. The Applicant submits that the cited references do not teach such a reinforcing beam.

In the claimed cab construction, from an operator who is seated in the cab, the cross beam member is located at a closer position than the reinforcing member. That is to say, the reinforcing beam member which is located on the far side of the cross beam member and outside the cab appears in a reduced size to the operator's eyes as compared with the cross beam member. When an operator is seated in the cab and turns his or her eyes in an obliquely upward direction, the reinforcing member is seen in a partly overlapped state or in a partly concealed state behind the cross beam member. These visual effects make it possible to employ a strong and sturdy reinforcing beam member without sacrificing high visibility through the front and top windows to any objectionable degree. In case the reinforcing beam member is adjusted to a position which is completely overlapped with or concealed behind the cross beam member, it becomes possible to secure maximum visibility in an obliquely upward direction by employing a narrow cross beam member in combination with a strong reinforcing member.

¹ The Applicant notes that there is no requirement in U.S. patent law that the claimed invention be "superior" to the prior art, but rather the claimed invention need only be novel and non-obvious over the prior art.

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In response to the Response to the Arguments section of the Official Action, the assertion that the light bar of the Stevens reference cannot act as a reinforcing member is based upon the structure of the light bar in the Stevens reference. The light bar is pivotally mounted on the end supports, and thus clearly could not provide torsional restraint. Additionally, the light bar of the Stevens reference would not likely be able to provide any reinforcement along the axis of the light bar, due to the axially weak pivotal connections on the ends of the light bar. The Stevens reference does not teach that the light bar is a reinforcing member.

Regarding the issue of hindsight, the Applicant notes that the cited references do not teach the location of the light bar of the Stevens reference on either the cab of the JP 7-34486 reference or the cab of the Martin, Jr. et al. reference. The light bar of the Stevens reference is a bulky structure that would readily block the view of the operator in the cab. From a review of the cited references it is unclear whether the light bar should be placed behind the roof window, above the front window and in front of the roof window, below the front window, or even below the lower window. None of the references teach the location of this light bar, since neither of the JP 7-34486 reference nor the Martin, Jr. reference contemplates the use of such a feature. The only teaching of a reinforcing beam member located in the manner recited in Claim 1 is in the present application. In fact, a review of the cited references would likely teach one of skill in the art to locate the light bar below the front window (15) of the JP 7-34486 reference, since this location would allow the lights to shine upwards as well as downwards directly in front of the cab. If the light bar is positioned above

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the front window, then the lights would not be able to shine on locations directly in front of the cab, which the operator views through the lower window 16.

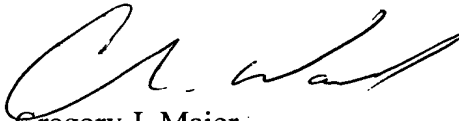
Accordingly, the Applicant respectfully requests the withdrawal of the obviousness rejection of Claim 1.

Claims 5-8 and 11 are considered allowable for the reasons advanced for Claim 1 from which they depend. These claims are further considered allowable as they recite other features of the invention that are neither disclosed, taught, nor suggested by the applied references when those features are considered within the context of Claim 1.

Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully Submitted,

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